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IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION	)	CASE NOS. AVU-E-14-05
OF AVISTA CORPORATION TO INITIATE	)	AVU-G-14-01
DISCUSSIONS WITH INTERESTED	)	
PARTIES ON AN EXTENSION OF THE	)	
EXISTING RATE PLAN AND AVOID A	)	COMMUNITY ACTION
GENERAL RATE CASE	)	PARTNERSHIP PETITION
	)	FOR INTERVENOR FUNDING
	)	
	)	

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**I. INTRODUCTION**

COMES NOW, the Community Action Partnership Association of Idaho (CAPAI) and, pursuant to Idaho Code § 61-617A and Rules 161-165 of the Commission's Rules of Procedure, IDAPA 31.01.01.161-165, petitions this Commission for an award of intervenor funding in the above-captioned proceeding.

**II. BACKGROUND**

Because this case was settled through confidential negotiations pursuant to IDAPA 31.01.01.272, CAPAI will not divulge anything discussed during the two settlement meetings leading to the Settlement Stipulation, but offers, in general terms, the nature, scope and extent of CAPAI's involvement in this proceeding for the purposes of the Commission's procedural rules related to intervenor funding. Incidentally, the specifics of CAPAI's analysis of Avista's filing in

this case and the resulting settlement agreement now pending before the Commission were set forth in the formal, written comments filed by CAPAI on August 15, 2014 and are incorporated herein by reference.

The nature of this case is somewhat unique, both substantively and procedurally. There is a similarity to Rocky Mountain Power's 2013 filing in Case No. PAC-E-13-04 in which that utility proposed what amounted to a rate increase without going through the process of a formal general rate case. Avista's filing also sought to avoid filing a general rate case after the previous settlement stay-out provision expired through a non-traditional rate filing, but the underlying facts and procedure followed by Avista were quite different.

The process implemented in this case by Avista involved considerable pre-filing efforts by the Company to, first and foremost, alert all known regular parties to Avista proceedings before this Commission of the upcoming filing as early as March, 2014, and to provide those parties with details as to the nature of the Company's planned filing. This immediately initiated a fairly thorough back-and-forth information exchange between the Company and parties leading to formal meetings with each party in May during which Avista made a series of presentations to each individual party. By the time that the formal meetings with parties took place, considerable work had been conducted by CAPAI to begin analyzing the Company's proposal and begin a process of submitting informal information requests through which the Company provided information rising to the level of formal discovery in a general rate case.

This informal process of discovery/information exchange continued through the date that CAPAI executed the settlement agreement roughly four months later. Thus, although the Company met with CAPAI on May 27th, 2014 to make its formal presentation, CAPAI had already invested considerable time and effort beginning more than two months prior to begin

understanding the proposed filing and weighing the pros and cons in terms of the consequences of the filing on the Company's low income customers.

The formal meetings between Avista and the parties included a thorough face-to-face presentation by Company personnel followed by a thorough question and answer exchange. Because of the proactive and transparent nature of the process employed by Avista, and the fact that , because of informal discovery/information exchange already conducted by CAPAI prior to the meeting, CAPAI's representatives already had an understanding of the proposed filing and sufficient opportunity to analyze its consequences leading to an information exchange more productive than it would otherwise have been. These formal meetings, therefore, afforded parties such as CAPAI the opportunity to ask questions relatively refined questions and to provide input before the case was ever filed.

Following the formal meetings, CAPAI continued to avail itself of the opportunity to obtain information relevant to its constituents' interests and that would enable CAPAI to determine whether the Company's overall proposal was in the best interests of those constituents and otherwise fair, just and reasonable. In this regard, CAPAI notes that Company personnel, specifically Linda Gervais and Pat Ehrbar, were readily available and extremely prompt in responding to all of CAPAI's questions and concerns. This approach by the Company of reaching out to all interested stakeholders from the outset and through a process that eliminated surprises and produced an equal distribution of information to all parties, certainly facilitated CAPAI's ability to determine whether to join in the proposed settlement agreement.

Though, as stated elsewhere in this Petition and articulated by CAPAI in Rocky Mountain Power's 2013 case, CAPAI continues to have pragmatic concerns about the practice of avoiding general rate cases through expedited filings that, effectively, result in general rate

increases, the process implemented gave CAPAI had the ability to fully assess the Company's overall impact on low income customers and conclude that it was in their best interests and resulted in a fair, just and reasonable outcome for the general body of Avista's ratepayers.

CAPAI also wishes to acknowledge and express its appreciation for the fact that the Commission Staff made its personnel available for face-to-face meetings as well as numerous telephone conversations to engage in discussions of LIWA programs in general, and Avista's program in particular, to discuss and analyze the various issues at play for CAPAI's constituents and to deliberate on the technical issues and procedural possibilities available to CAPAI under the circumstances. Staff made its experts available to CAPAI representatives through telephone conferences, email exchanges and face-to-face meetings to discuss and analyze technical and policy issues and considerations. It is CAPAI's position that the value of these various meetings and conferences will prove of value into the as CAPAI continues to address the issues of Idaho's low income public utility customers and advocate for those ratepayers as well as assess its internal proficiency in terms of Commission-approved programs including, but not limited to, low income weatherization assistance (LIWA) and conservation education. CAPAI is appreciative of Staff's efforts in this respect.

In summary, due to the proactive and transparent of the process implemented by Avista in this case combined with the cooperation and assistance of Commission Staff to examine issues of technical complexity and important policy considerations, CAPAI believed it had a solid understanding of the case that enabled it to comfortably join in the settlement agreement that it now supports for approval by the Commission.

### **III. PROCEDURAL REQUIREMENTS**

#### **Rule 161 Requirements:**





AVISTA is a regulated, electric and gas public utility with gross Idaho intrastate annual revenues exceeding three million, five hundred thousand dollars (\$3,500,000.00).

**Rule 162 Requirements:**

**(01) Itemized list of Expenses**

Consistent with Rule 162(01) of the Commission's Rules of Procedure, an itemized list of all expenses incurred by CAPAI in this proceeding is attached hereto as Exhibit "A."

**(02) Statement of Proposed Findings**

Like every other party who joined in the settlement, CAPAI supports the settlement in its entirety and proposes that it be approved and adopted by the Commission. CAPAI appreciates the parties who executed the settlement, particularly Avista and the Commission Staff, who helped to devise a process of continuing to assess all aspects of the Company's LIWA program, from cost-effectiveness to adequate levels of funding, and provide an agreed-upon timeline for doing so. Furthermore, Avista has demonstrated over time its willingness to work with CAPAI on an informal basis to better define and identify the Company's low income customers and understand the implications of residential rate design on those ratepayers.

CAPAI recommends, therefore, that the Commission approve the settlement agreement as it exists, and find the same to be a fair, just and reasonable outcome for all ratepayers.

**(03) Statement Showing Costs**

For the reasons stated throughout this Petition, CAPAI respectfully submits that the costs it seeks to recover and set forth hereto in Exhibit A, are reasonable in amount.

Although the Company's filing resulted in a negotiated settlement, there are several factors that required CAPAI to engage in reasonable and significant effort to adequately represent the interests of low income customers in much the same manner as had this been a

general rate case filing. General rate cases have, historically, provided an opportunity for all parties to raise a wide array of issues pertinent to the utility seeking a general rate increase. Due to financial constraints and other reasons, it is often not feasible for parties like CAPAI to make formal, issue-specific, filings with the Commission every time they believe that an issue requiring Commission action exists. Thus, CAPAI, like all other parties, must ensure that any settlement agreement that constitutes a *de facto* rate increase but does so without a formal hearing and the opportunities such a process provides does address those critical issues that CAPAI would otherwise raise during a general rate case. This is particularly true where the settlement agreement includes a "stay-out" provision further deferring the next opportunity to raise issues as described.

Filings such as the one at hand and in which rates are effectively increased without the same degree of scrutiny that the proposed increase would be subject to if the matter were to proceed to hearing, can be a source of concern for CAPAI. In saying this, CAPAI is in no way suggesting that Commission Staff does not otherwise fully scrutinize a utility's proposed filings to determine whether, from a ratemaking standpoint, the filing and resulting settlement would result in rates that are fair, just and reasonable. Despite Staff's ratemaking scrutiny, however, general rate cases often involve issues that simply do not fall within the scope of Staff's rate analyses and, on occasion, justify the airing of issues in a contested case hearing before the Commission. In this respect, CAPAI generally concurs with the sentiments expressed by Snake River Alliance in its comments filed in this matter.

In the case at hand, it was necessary for CAPAI to consider several potential disadvantages to the proposed settlement. Pursuant to Order No.32788, issued in Case No. GNR-E-12-01, funding for Avista's low income weatherization program (LIWA) is no longer

necessarily frozen at existing levels. *See, Order No. 32788, p.13* Thus, CAPAI had to factor in to its settlement decision the fact that it was waiving, for the purpose of this case, an opportunity to advocate moving forward with respect to a highly valuable and unique conservation program that is capable of providing considerable benefits to low income customers and value to the general body of ratepayers.

Another factor CAPAI had to consider is that the Company's current residential rate design might no longer be fair, just and reasonable for low income ratepayers based on their respective levels of consumption and the fact that they are prone to being more price inelastic due to financial constraints making it difficult, if not impossible to weatherize their homes. It is conceivable that, had this case gone to full hearing, CAPAI might have advocated for a change in residential rate design to address inequities that might exist for low income customers.

The foregoing examples are but two of the number of issues that CAPAI analyzed in considerable detail and discussed with Avista, the Commission Staff, and other parties. In short, the majority of the same work that CAPAI must invest in preparing to go to hearing is required to determine whether to join in an extended-term rate settlement. Although Avista acted in exemplary fashion regarding its willingness to facilitate CAPAI's analyses, CAPAI was working within a relatively compressed time frame in comparison to a general rate case, and its legal counsel and technical and policy expert were required to put other matters aside and conduct the work necessary to ensure that low income interests were sufficiently addressed by the proposed settlement within the agreed-upon deadlines.

Another unique aspect to this case is that CAPAI invested considerable time working with Commission Staff to address issues and concerns Staff had and those it still has regarding Avista's LIWA program. As noted herein, CAPAI believes that these efforts were very



worthwhile and will prove valuable in the future, there was considerable discussion with Staff regarding the feasibility of seeking LIWA funding increases, current program design, cost-effective analysis, and ideas for improving the overall efficacy of LIWA. These efforts ultimately yielded a settlement provision set forth in Section III(F)(3) of the settlement agreement. CAPAI appreciates both Staff and the Company for agreeing to continue to address the Company's LIWA program and believes that the time frame for doing so and contained in the settlement agreement constitutes a reasonable approach to accomplish this objective.

Finally, regarding the reasonableness of CAPAI's costs, CAPAI notes that it has no choice but to minimize its expenses and maximize the effect that its involvement has in proceedings before the Commission in light of its limited financial resources for this type of effort. Suffice it to say that CAPAI seldom can afford to retain an expert witness and does so only in particularly technical and critical proceedings. Otherwise, it must adopt a resourceful approach using what limited resources that are at its disposal. In this regard, CAPAI relies heavily on its Executive Director, Christina Zamora, for all technical and policy aspects of this and any other IPUC case that CAPAI intervenes in. In that and every other respect, Ms. Zamora is a highly-qualified expert. Were CAPAI to track and bill her hours at anything remotely resembling a modest market rate, CAPAI's funding requests would increase significantly. As it is, Ms. Zamora performs what she considers to be another aspect of her work.

Thus, from CAPAI's perspective, it cannot afford to retain an outside expert and then be compensated for that person's work, yet its own expert, Ms. Zamora, contributes substantial amounts of time and resources into PUC cases and does not seek a single cent of money for her efforts. CAPAI respectfully submits that this is something that should not be undervalued or underappreciated.

Finally, CAPAI notes that its legal counsel's stated rate is less than the average first year associate practicing in Boise, Idaho. CAPAI's counsel has nearly 30 years of practice as an attorney, 24 years of which include public utilities work, one of the most highly specialized fields in the practice of law. Hourly rates for an attorney with commensurate experience in such a specialized area of practice in this market are at least 2-3 times what CAPAI seeks for recovery in its intervenor funding requests. Furthermore, in the roughly eleven years that CAPAI's legal counsel has represented CAPAI in PUC proceedings, counsel has increased his rate only 2-3 times and, even then, only an overall total of approximately \$50/hour.

Based on the foregoing, the comments submitted by CAPAI on August 15, 2014, and Exhibit "A" to this Petition, CAPAI respectfully submits that the costs incurred and requested in this case are reasonable in amount.

#### **(04) Explanation of Cost Statement**

CAPAI is a non-profit corporation overseeing a number of agencies who fight the causes and conditions of poverty throughout Idaho. CAPAI does not have "memberships" and, therefore, does not receive member contributions of any kind. Many of CAPAI's funding sources are unpredictable and impose conditions or limitations on the scope and nature of work eligible for funding. CAPAI, therefore, has relatively little "discretionary" funds available for all projects.

CAPAI's sole source of funding to cover the costs of intervention before this Commission is the LIHEAP program. CAPAI's LIHEAP budget is severely limited and inflexible and, if recent years serve as any indication, uncertain as to its future levels.

Thus, were it not for the availability of intervenor funds and past awards by this Commission, CAPAI would not be able to participate in cases before this Commission

representing an important and otherwise unrepresented segment of regulated public utility customers. Even with intervenor funding, participation in Commission cases constitutes a significant financial hardship because CAPAI must pay its expenses as they are incurred, not if and when intervenor funding becomes available.

**(05) Statement of Difference**

CAPAI was the only party to fully analyze rate design as it affects residential, low-income customers and Avista's LIWA program funding and waited until it had completed its analysis before joining the settlement. Although the Company and Staff ultimately provided helpful input to CAPAI in the latter's efforts, it is fair to say that CAPAI's determination to address this important issue before joining in the settlement was a material difference from the position taken by Staff for purposes of intervenor funding requirements.

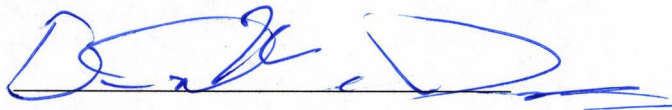
**(06) Statement of Recommendation**

Avista's low income customers constitute a significantly and increasing segment of the Company's residential ratepayers. In today's increasingly challenging economic times, issues affecting low income public utility ratepayers also become increasingly important. To the extent that low income customers are unable to reduce their energy consumption due to limited financial and other means and to the extent that the poor are most vulnerable to disconnection due to inability and failure to pay their bills, this clearly affects the general body of Avista's customers.

**(07) Statement Showing Class of Customer**

To the extent that CAPAI represents a specific customer class of AVISTA, it is the residential class.

RESPECTFULLY SUBMITTED, this 29th day of August, 2014.

A handwritten signature in blue ink, appearing to read 'Brad M. Purdy', with a horizontal line extending from the end of the signature.

Brad M. Purdy



**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be served the foregoing document on the following by either hand delivery or U.S. Mail, first class, and via email:

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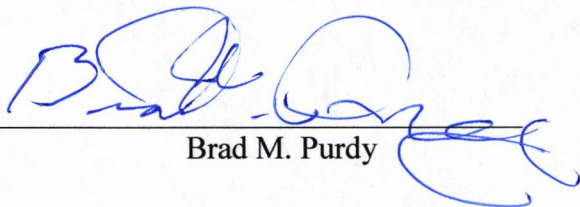
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kmiller@snakeriveralliance.org  
**Dated**, this 15th Day of August, 2014

  
Brad M. Purdy

## **EXHIBIT "A"**

### **ITEMIZED EXPENSES**

As outlined below, CAPAI respectfully seeks intervenor funding in this proceeding in the amount of \$9,920.00. The most recent case in which CAPAI sought intervenor funding was Case No. PAC-E-13-04 in which the Commission, for the first time since CAPAI began intervening in cases before this Commission in the early 2000s, issued several orders questioning the form and/or substance of CAPAI's funding petition initially requiring CAPAI to "indicate the amount of hours or the percentage of hours spent on areas" which the Commission then outlined. CAPAI complied with this directive by providing the percentage of hours spent on the areas specified by the Commission in a subsequent filing. The Commission then awarded intervenor funding in the sum of \$12,000.00 but, despite CAPAI's compliance with the Commission's specific directive, continued to note shortcomings in CAPAI's support for its costs stating, in reference to the undersigned, that "[w]e urge counsel to develop or obtain a system to more accurately track and document his professional services related to Commission proceedings." Order No. 32946.

Because CAPAI's counsel had provided the percentage breakdown in the categories outlined by the Commission, it remained unclear to CAPAI exactly what the Commission expected from CAPAI's legal counsel to substantiate his hours and costs short of including actual time sheets submitted by legal counsel to his client. As CAPAI explained in considerable detail, legal counsel's time sheets are not only tracked and documented, but unusually detailed and contain intimate descriptions of, among other things, legal strategy that is relevant not only to the case at hand, but future cases as well.

Certain CAPAI invoice entries for a single day can fill nearly an entire page, single-spaced. An invoice for a given month is typically 3-5 pages in length, with a level of detail so great that individual telephone calls are often described. Compared to some attorneys, CAPAI's legal counsel simply never has an entry to the effect of "worked on case." This would simply not be acceptable for CAPAI's needs. As CAPAI also explained in detail in Case PAC-E-13-04, the various reasons that its legal counsel maintains such meticulous time sheets, include, among many other things, the fact that they constitute an invaluable resource for quickly recalling what actions were taken during a given case, and on what date. Most important is the fact that CAPAI is monitored and audited by governmental entities. As a government-funded entity, CAPAI must account for its activities with specificity. Attorney time sheets that are anything other than meticulous place CAPAI in a potentially difficult position with respect to federal laws and expectations, something that CAPAI's legal counsel clearly cannot allow to happen for his client.

CAPAI is unclear why or when certain parties began attaching actual attorney time sheets to their intervenor funding petitions, but maintains that this practice is a very slippery slope both for the attorney, from an ethical standpoint and, more importantly, from the perspective of the client's best interests. Because of the detailed nature of CAPAI's legal counsel's time sheets, they clearly convey CAPAI's litigation strategies, among other things, which are not discoverable under the Idaho Rules of Civil Procedure and fall squarely within the letter and intent of the Idaho Rules of Professional Responsibility approved by the Idaho Supreme Court and enforced by the Idaho State Bar Association.

Notwithstanding the foregoing, CAPAI fully understands and appreciates the Commission's need and desire for a factual basis on which to issue intervenor funding rulings and wishes to provide the Commission with what it needs in that respect. This is why CAPAI

filed a Petition for Clarification with the Commission in Case PAC-E-13-04. The Commission denied that Petition, however, in Order No. 32975 and offered no greater specificity as to precisely what it expects from CAPAI. This is the conundrum that CAPAI perceives itself to be facing.

Regardless, and in a continued effort to provide the Commission with the information it deems necessary, attached below is a monthly breakout of hours worked, and a general description of the work performed during that month. CAPAI wishes to emphasize that the work summaries, though accurate, do not fully reflect actual work performed. They do, however, provide additional information from that previously provided to the Commission. If the Commission still desires additional or different information, CAPAI welcomes any specificity the Commission is willing to provide and will, to the very best of its ability, comply.

### **CAPAI'S SUMMARY OF WORK PERFORMED BY LEGAL COUNSEL**

#### **March Invoice** (for work performed during March):<sup>1</sup>

**Total Hours Worked:** 1.5

**Nature of work:** Discussed upcoming Avista rate case filing and need to fully assess current status of Company's LIWA program and all issues related thereto prior to rate filing. Related research re status of LIWA since 2012 generic rate case and current need for program. Numerous phone conversations and emails with Avista and client.

#### **May Invoice**

**Total Hours Worked:** 2.4

**Nature of Work:** Continued discussion of need to assess status of LIWA program and whether it will be considered in upcoming rate case. Continued research into cost-effectiveness evaluations of LIWA and pending studies/reports for same. Numerous phone conferences with Avista personnel and client, including N. Idaho Community Action Agency personnel.

#### **June Invoice**

**Total Hours Worked:** 7.0

**Nature of Work:** Numerous communications with Avista personnel including legal counsel re proposed filing and meetings with all

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<sup>1</sup> Each invoice's stated month is for work actually performed during the preceding month. Invoices are sent out at the beginning of each month after the previous month's work has been described and included in an invoice and the hours (and any "costs") calculated.

stakeholders prior to filing. Numerous emails/phone calls Avista and client re scheduling of meetings, nature of same, nature of filing and initial discussion of CAPAI's areas of interest and issues to be addressed. Preparation for and conducting of meeting with Avista to discuss proposed rate filing. Post-meeting communications and strategy analyses with client. Initial information requests (informal discovery) w/Avista re all LIWA and residential rate design issues relevant to low income customers. Meetings with other stakeholders to discuss Avista proposal and other parties' position w/respect to same. Follow-up meetings and other communications.

### **July Invoice**

**Total Hours Worked:**

**18.0**

**Nature of Work:** Thorough analysis of Avista rate filing and numerous communications with client and other parties re same. Identify all issues of all parties. Meetings w/other parties. Communications w/ Staff re procedural implications of Avista filing and housekeeping matters including need for intervention filing, etc. Receipt/review Commission intervention orders. Considerable discovery with Avista and related teleconferences w/Company and client re same. Coordinate best means to advance desire to improve LIWA program, where possible, and to work with Staff to address latter's concerns and solicit input re same. Phone calls/emails Commission Staff re technical and procedural issues. Constant communications with client re foregoing. Outline plan for meeting w/Staff and Company to advance discussion of all issues of interest to Company's low income customers. Numerous phone conferences Avista re rate design issues including consumption data of Company's low income customers. Receipt and analyze data provided by the Company re same. Communications with other parties re their respective issues and positions on same and possible settlement as proposed by Avista. Internal discussions and analyses of pros and cons of proposed settlement. Scheduling of settlement negotiations and preparation for same. Additional meetings/communications other parties prior to settlement. Preparations for settlement negotiations and participation in same. constant communications with client throughout. Detailed discussions w/Avista re cost-effectiveness evaluations of LIWA programs in other cases and possible use in pending case. Post-settlement phone calls Staff re procedural options for CAPAI and LIWA/rate design in general. Follow-up discussions w/Staff with goal of meeting to discuss technical and policy aspects of low income issues in person. Numerous teleconferences with client.

### **August Invoice**



**Total Hours Worked:**

**22.0**

**Nature of Work:**

Continued communications all parties re low income issues and federal action affecting WAP weatherization program and gap created increasing importance of utility-funded programs. Preparation for and participation in meeting w/Staff to discuss/analyze all low income issues. Follow-up communications Staff and client re same. Internal discussions re assessment of how various agencies implement LIWA and assessment of whether efficiencies can be obtained through implementation of various techniques, including those recommended by Staff. Analysis of overall "need" for LIWA now in relation to 2012 when funding levels were frozen. Many meetings and other communications with client and CAPAI agency personnel. Additional communications w/Staff and agreement to meet again Numerous communications w/Avista re meetings w/Staff and proposed settlement. Receipt and analysis of proposed settlement agreement from Avista and many communications with all parties re same including whether it adequately addresses the ongoing efforts to address low-income issues. Review numerous back and forth proposed revisions from all parties to settlement agreement. Propose revisions to settlement to better address low income issues. Conduct second technical/policy meeting with Staff and CAPAI. Constant communications with client throughout month. Additional detailed conversations w/Avista technical staff re low income issues and weighing pros and cons of various procedural options. Receipt/review numerous revisions-counter-revisions and many drafts of settlement agreement. Numerous communications all parties re same. Discussions w/client re decision whether to join in proposed settlement agreement. Detailed discussions w/Avista re how to proceed with addressing low income issues if settlement, as proposed, is executed. Discuss timelines for same and procedural options. Many communications and meetings w/client and CAPAI agency personnel related to rate case and LIWA in general. Detailed discussions w/Avista re rate design issues and agreement to further analyze same on an ongoing, informal basis. Finalize and execute settlement agreement on behalf of CAPAI. Post settlement meetings with client to discuss how to actually implement agreed-upon process for addressing low income issues and timeline for doing so as well as need to coordinate efforts internally within CAPAI. Additional communications w/Staff re procedural timelines for post-settlement issues, including filing of comments as opposed to testimony and filing of intervenor funding testimony.

**September Invoice**

**Total Hours Worked:**

**15.00**

**Nature of Work:** Prepare and file CAPAI's comments in support of proposed settlement agreement. Numerous meetings and other communications with Staff, Avista and other parties as follow-up to settlement. Receipt and analysis of all other parties' comments filed with IPUC. Internal meetings w/CAPAI personnel to discuss and outline work needed to engage in low income work outlined in settlement agreement and preparation needed for same.

**Total Hours Worked on Case** **65.90**

**Costs:**

Photocopies/postage \$35.00

**Total Costs** **\$35.00**

**Fees:**

Legal (Brad M. Purdy -65.90hours @ \$150.00/hr.) \$9,885.00

**Total Fees** **\$9,885.00**

**Total Expenses** **\$9,920.00**